

## TREASURY SERVICES AGREEMENT

## Terms and Conditions



Company Name: Kansas State University  
 Company Identification Number: 48-0771751

**Introduction.** Bank shall perform Services described in separate Service Agreements and corresponding Service Manuals in accordance with this Treasury Services Agreement and the respective Service Agreements and Service Manuals. **Bank may utilize outside service providers and agents in the performance of all or any of the Services.** If the terms of any of the Service Agreements and/or Service Manuals conflict with this Treasury Services Agreement, this Treasury Services Agreement shall control.

1. **Company's Records and Media.** The Company will provide to the Bank all records and data processing media necessary to perform the Services. The records will be legible, correct, and complete and in the format specified in the Service Agreements, Service Manuals and any related schedules. The records will contain totals and proof information satisfactory to the Bank. All data processing media supplied by the Company must be as specified by, or acceptable to, the Bank. Checks must be MICR encoded in accordance with the Bank's specifications.

When any Service Agreement is terminated, the Company will instruct the Bank in writing within sixty (60) days whether the Bank should return or destroy any data processing media furnished by the Company and any records produced as a part of the terminated Services. If the Company does not instruct the Bank within such sixty (60) day period, the Bank may destroy, retain or return any such materials, and shall have no liability to the Company or any third party if such materials are destroyed or are otherwise not retained.

All specifications, tapes or other media, programs and procedures owned by the Bank or its service providers in connection with the performance of the Services, will be and remain the sole property of the Bank. The Company will return such materials to the Bank promptly upon request, and shall be responsible for any damage to any such materials incurred in shipping and usage other than normal wear and tear.

2. **Company Failure to Furnish Satisfactory Records and Media.** The Bank's performance of Services is subject to the Bank's receipt of timely, accurate and complete data for each Service, in form and on media specified by, or acceptable to, the Bank. If any of these requirements are not met by the Company:
  - a. The Bank shall no longer be bound by the applicable production and delivery schedules; and
  - b. The Bank shall be authorized to produce and deliver (as a "complete and finished work product") whatever portion of the Services can be performed under the circumstances.

In addition to the foregoing, the Company shall compensate the Bank at the Bank's then current rates for time and materials for converting data from nonstandard form to standard form, or for completing missing data.

3. **Company's Duty to Inspect.** The Company shall be responsible for inspecting the work product for all Services performed, when received, and for notifying the Bank immediately upon the discovery of any errors. **The Company must notify the Bank within a reasonable time after receipt of the material containing any error, or of a report or statement reflecting any error, and in any event, within the time periods specified in the applicable Service Manuals. Except to the extent otherwise provided by applicable law, failure to notify the Bank of errors within the applicable time period will relieve the Bank of any and all responsibility and liability relating thereto.**
4. **Limitation of Liability.** Except to the extent otherwise provided by applicable law, the Bank's liability will be limited as set forth herein. **The Bank's liability shall be limited to actual damages sustained by the Company and only to the extent such damages are a direct result of the Bank's failure to act in good faith and exercise ordinary care (as measured by the standard of care as set forth in Section 12 below).** The Bank shall not be liable for any act or omission of the Company or any third party, or for any charges imposed by any third party. Each Service



Agreement shall constitute a contract solely between the Bank and the Company, and the Bank shall have no liability thereunder to any third party. **EXCEPT TO THE EXTENT OTHERWISE LIMITED BY APPLICABLE LAW, IN NO EVENT SHALL THE BANK BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE).**

For transfers governed under Article 4A of the Uniform Commercial Code, the Bank will compensate the Company, to the extent required by applicable law, for the Company's loss of interest on funds as a direct result of the Bank's failure to comply with such law in executing a transfer; such compensation shall be based upon the Fed Funds Rate at the Federal Reserve Bank of New York in effect at the time of the claimed loss of interest (as determined by the Bank in its reasonable discretion). **Except to the extent otherwise provided by applicable law,** the Bank shall not be liable for the Company's attorney's fees in connection with any claim for loss of interest, or otherwise.

5. **Fees.** The Company shall compensate the Bank for the Services in accordance with the Bank's fee schedules in effect from time to time. The Bank may amend the fee schedules at any time and will endeavor to give written notice to the Company of changes in fee schedules relating to Services then being performed for the Company. The Bank is authorized by the Company to charge fees, on the applicable due dates, to the Company's account(s). If acceptable to the Bank, fees may also be payable through the maintenance by the Company of required compensating collected balances in specified account(s) of the Company; the compensating collected balance requirements will be measured by Bank's standard "analysis" of the Company's specified account(s). In the alternative, Bank may bill the Company for fees, by invoice.

In addition to the fees to be paid by the Company, the Company agrees to pay all sales, use or other taxes applicable to the Services provided hereunder, excluding, however, taxes based upon the Bank's net income.

6. **Overdrafts; Set-off.** In the event any actions by the Company should result in an overdraft in any of its accounts, the Company shall be responsible for immediately covering the overdraft (with immediately available funds), together with interest thereon at a per annum rate equal to three percent (3%) in excess of the Bank's published Prime Rate. Notwithstanding the foregoing, Bank shall have no duty or obligation to honor or effect any transfer, which will result in an overdraft in any of Company's accounts. The Bank may set off any amount owed to it in connection with the Services performed by the Bank against any deposit account of the Company held by the Bank or any of its affiliates, or against any other amount owed the Company by the Bank or any of its affiliates.
7. **Credit Limits; Documentation.** In the event the Services selected by the Company and to be performed by the Bank may result in credit exposure to the Bank, the Bank may limit the Company's transaction volume or dollar amount and refuse to execute transactions that exceed any such limit. The Company shall, upon request by the Bank from time to time, provide to the Bank financial information and statements and such other documentation as the Bank determines to be reasonably necessary or appropriate to enable the Bank to evaluate its credit exposure and the Company's credit worthiness. The Company shall provide to the Bank, as the Bank may request from time to time, such documentation (such as resolutions, incumbency certificates, authorizations, agreements and other documents) relating to (without limitation) the Company's authority to contract for the Services and/or the Company's establishment of any deposit accounts.
8. **Security Procedures.** If the Services involve the establishment of security procedures to be implemented and followed by Company, the Company agrees that it shall be solely responsible to assure that such security procedures are followed, as they may be amended from time to time. If such security procedures are breached or violated, the Company agrees to immediately notify Bank of any such breach or violation. **THE COMPANY ACKNOWLEDGES THAT IT HAS REVIEWED ALL APPLICABLE SECURITY PROCEDURES AND HAS DETERMINED THAT THOSE PROCEDURES ARE COMMERCIALY REASONABLE. THE COMPANY ALSO AGREES THAT ITS EXECUTION OF ANY SERVICE AGREEMENTS IN THE FUTURE WILL CONSTITUTE ITS ACKNOWLEDGEMENT THAT ALL SECURITY PROCEDURES APPLICABLE TO THE RESPECTIVE SERVICES ARE COMMERCIALY REASONABLE.** This Section 8 shall survive termination of all Service Agreements.



9. **Indemnity.** The Company shall indemnify and hold the Bank harmless from any and all claims, damages, losses, liabilities, costs and expenses, including reasonable attorneys' fees, which result from any breach of a Service Agreement or this Treasury Services Agreement by the Company, or which relate in any manner to the Services performed under this Treasury Services Agreement and the respective Service Agreements and Service Manuals, except to the extent arising from the Bank's failure to perform Services in accordance with the standard of care as set forth in Section 12 below.
10. **Term.** Each Service Agreement shall continue until terminated by either party upon thirty (30) days prior written notice; provided, however, each Service Agreement shall automatically terminate without notice (i) upon the filing by or against the Company of any bankruptcy petition or a petition for the appointment of a receiver, or upon the filing of any other action alleging, or if a determination is made, that the Company is insolvent, (ii) in the event that the Company's designated accounts with the Bank are closed, (iii) upon termination of a third party contract which is necessary for the performance of the Services, or (iv) if either the Bank or the Company is hereafter prohibited by law from performing or contracting for the Services. The Bank may also terminate any Service Agreement immediately with or without notice if the Bank determines that the Company has failed to maintain a financial condition deemed necessary by the Bank, or in the event of a material breach by the Company of any agreement between the Company and the Bank.
11. **Force Majeure.** The Bank shall bear no responsibility for non-performance of any Services caused by, or relating to, an event beyond Bank's control, including, without limitation, fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, sabotage, labor shortage, lockout, strike, unavoidable accident, acts of God, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency or catastrophe that prevents or materially interferes with the Bank's normal operations.
12. **Standard of Care.** Bank will make reasonable efforts to select and use facilities, equipment, personnel and third party service providers in connection with the activities to be performed under the respective Service Agreements and this Treasury Services Agreement, with the same care as it exercises in the conduct of its own banking operations. **Bank shall perform its duties and obligations under the Service Agreements in accordance with the customary commercial practices of Bank, and, subject to the limitations and exceptions set forth in Section 4 above, Bank shall not be liable for any error of judgment, or for any act done or step taken or omitted in accordance with the customary commercial practices of Bank.**
13. **Facsimile Signature.** If the Company at any time authorizes or permits utilization of a facsimile signature for any "authorized signature", the Bank shall be entitled to honor and charge the Company for all checks and other orders for payment of money so signed, regardless of by whom or what means the purported or actual facsimile signature may have been affixed thereto, if such orders are drawn in the Company's name. Company agrees that all previous, present and future authorizations shall continue in full force and effect until Bank is advised in writing to the contrary and until Bank shall have had a reasonable opportunity to act upon such advice.
14. **Check Retention.** If the Company chooses to have the Bank retain copies of its paid checks, Company agrees not to make any claim against the Bank arising out of the authorized destruction of the original checks, or the clarity or legibility of any copy that the Bank provides.
15. **Business Purpose.** The Company agrees that the Services to be performed by the Bank will be used by the Company solely for business or commercial purposes and not for personal, family, or household purposes.
16. **Severability.** If any provision of this Treasury Services Agreement or any Service Agreement shall be determined by a court of competent jurisdiction to be void or unenforceable as written, the affected provision shall be interpreted so as to achieve, to the extent permitted by applicable law, the purposes intended under the original provision, and the remaining provisions of the Service Agreements and this Treasury Services Agreement shall continue in full force and effect, as modified.
17. **Headings; Complete Agreement.** Headings are used for reference purposes only and shall not be deemed a part of these Terms and Conditions. The parties hereto acknowledge that each has read the Service Agreements and this Treasury Services Agreement, understands them, and agrees to be bound by the respective terms thereof. The parties further agree that the Service Agreements, the Service Manuals and this Treasury Services Agreement, and



any written modifications made to any of the foregoing, and the applicable deposit account agreements, shall constitute the complete and exclusive expression of the agreements between the parties, and shall specifically supersede all other proposals (whether oral or written), understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating to the subject matter of all of the foregoing.

18. **Amendments; Assignments.** The Bank may amend this Treasury Services Agreement, any Service Agreement and/or Service Manual at any time. Unless a greater period is otherwise required by applicable law, the Bank will use reasonable efforts to provide notice to the Company, at least ten (10) days before the effective date, of any amendment which in the reasonable opinion of Bank will materially alter the terms of this Treasury Services Agreement, any Service Agreement and/or Service Manual. Company may not assign any Service Agreement or any of its rights or duties hereunder or thereunder to any person or entity without Bank's prior written consent, and any attempted assignment shall be null and void.
19. **Notices.** All notices required or permitted to be given hereunder shall be effective when received if hand delivered or sent by telecopier, or when deposited in the United States Mail, first class postage prepaid, and addressed to the respective parties at the addresses set forth below the respective signature lines contained herein, or to such other address as either party shall have specified in writing to the other.
20. **Binding Agreement; Benefit.** This Treasury Services Agreement and the Service Agreements shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives permitted successors and permitted assigns. This Treasury Services Agreement and the Service Agreements shall not be deemed to be entered into for the benefit of any other person or entity, and no other person or entity shall have any right against Bank or Company hereunder or thereunder.
21. **Waiver Of Jury Trial.** COMPANY AND BANK HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY ON ANY MATTERS ARISING OUT OF THIS TREASURY SERVICES AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN, IN THE SERVICE AGREEMENTS AND IN THE SERVICE MANUALS.
22. **Governing Law.** This Treasury Services Agreement and the Service Agreements shall be governed by, and interpreted in accordance with, the laws of the State of Missouri.

Kansas State University  
Company

Commerce Bank

Fran Willbrant

Please Print Name

Tom Giller

Please Print Name

By: [Signature] 3-29-13  
Signature Date

By: [Signature] 3-29-13  
Signature of Bank Officer Date

Assistant Vice President - Financial Services  
Title

Community Bank President - Manhattan  
Title

Address for notice: 102 Anderson Hall  
Manhattan KS 66503

Address for notice: Commerce Bank  
Treasury Services, KCTS  
P.O. Box 419248  
Kansas City, MO 64141-6248

Contact name: Jim Bach  
Phone number: 785 532-6210  
Tax I.D.: 48-0771750

## AMENDMENT TO TREASURY SERVICES AGREEMENT

This Amendment to the Treasury Services Agreement ("Amendment") is hereby entered into this 29 day of MARCH, 2013, by and between Kansas State University, a political subdivision of the State of Kansas, (the "University"), and Commerce Bank, a Missouri chartered bank with an office located in Manhattan, Kansas (the "Banking Institution.")

WHEREAS, the University requested proposals for depository and banking services, by distributing a Request for Proposal on or about JANUARY 10, 2013 (the "Request"); and,

WHEREAS, pursuant to the Request, the Banking Institution submitted a Banking Services Proposal (the "Proposal"); and,

WHEREAS, the University desires to receive treasury services from the Banking Institution, and the parties desire to enter into this Amendment to amend certain provisions in the Banking Institution's Treasury Service Agreement and related Service Agreements executed by the parties ("TSA").

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants, the parties hereto agree as follows:

1. The provisions of this Agreement shall be construed as amendments to the terms of the TSA. To the extent a provision herein conflicts with the provisions of the TSA (including any Service Agreement, Service Manual or other addendum to the TSA), the terms of this Agreement shall prevail.

2. The Banking Institution is hereby designated as the University's depository institution for an initial sixty (60) month term commencing April 1, 2013. This agreement shall automatically renew for two (2) additional twelve month terms, unless terminated by either party upon ninety (90) days written notice prior to the end of the initial term or renewal twelve (12) month term, or as otherwise provided herein. Notwithstanding the term provided for herein, if either party fails to fulfill any obligation hereunder, including those obligations set forth in the attachments hereto, the other party may deliver written notice to the defaulting party, specifying the acts or omissions constituting such failure, and further specifying that this Agreement will terminate upon a date not less than ninety (90) days after receipt of the notice, unless the defaulting party corrects the acts or omissions within such period of time. At the end of such period, if satisfactory corrections have not been made, the party providing such notice may notify the defaulting party that the Agreement is terminated at that time.

3. Unless the parties agree otherwise, termination in accordance with this Agreement shall also result in termination of all services provided under the TSA.

4. Banking Institution agrees that all pricing terms offered in its Proposal, and incorporated by reference, shall apply to the relationship between the parties. Except for



the pricing terms offered in the Proposal, the relationship between the parties shall be governed exclusively by the the TSA (including any Service Agreement, Service Manual or other addendum to the TSA) and this Amendment.

5. The parties agree to incorporate the addition terms provided in Attachment A, hereto, into the TSA.

6. The following provisions of the TSA shall also be amended as follows:

- a. From Paragraph 9 of the TSA, delete the following phrase, "including reasonable attorney fees."
- b. From Paragraph 18 of the TSA, delete all but the last sentence.

7. This Agreement shall be governed and construed in accordance with the laws of the State of Kansas.

WHEREFORE, the parties hereto have caused this Agreement to be executed by their officials duly authorized on the date and year first written.

**KANSAS STATE UNIVERSITY**

**COMMERCE BANK**

By: 

By: 

Its: Kansas State Univ  
Assistant Vice President

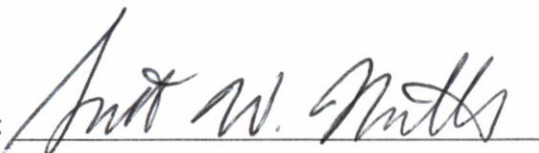
Its: Community Bank President Manhattan

Date: 3-29-13

Date: 3-29-13



**POOLED MONEY INVESTMENT BOARD**

By: 

Its: Director of Investments

Date: 4-04-13

ATTACHMENT A

ADDITIONAL CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract Treasury Service Agreement to which it is attached and made a part thereof, said contract being executed the 15 day of March, 2013.

- Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer" or a comparable provision; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor, provided, however, upon contractor's failure to do so, the exclusive remedy available to the State of Kansas will be termination of the applicable contract; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

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Comment [Vmh1]: KSA 75-6403 does not prohibit attorney fees

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13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.